

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 SEP 17 P 5:00

In the Matter of)
)
Illinois Consolidated Telephone Company)
)
and)
)
Odin Telephone Exchange, Inc.)
)
Joint Petition for Waiver of the Definition of)
"Study Area" Contained in the Part 36 Appendix-)
Glossary of the Commission's Rules)

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CC Docket 96-45

MEMORANDUM OPINION AND ORDER

Adopted: September 14, 2001

Released: September 17, 2001

By the Acting Deputy Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from Illinois Consolidated Telephone Company (ICTC) and Odin Telephone Exchange, Inc. (Odin) for a waiver of the definition of "study area" contained in the Part 36 Appendix-Glossary of the Commission's rules.¹ This waiver will permit Odin to alter the boundaries of its Illinois study area to remove the Oblong and Martinsville, Illinois, telephone exchanges, which it is transferring to ICTC. This waiver will also permit ICTC to alter the boundaries of its Illinois study area to include the acquired exchanges.

II. STUDY AREA WAIVER

A. Background

2. Study Area Boundaries. A study area is a geographic segment of an incumbent local exchange carrier's (LEC's) telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. Thus, incumbent LECs operating in more than one state typically have one study area for each state. The Commission froze all study area boundaries effective November 15, 1984,² and an incumbent LEC must apply to the Commission for a waiver of the study area

¹ Illinois Consolidated Telephone Company and Odin Telephone Exchange Joint Petition for Waiver of the Definition of "Study Area" contained in the Part 36 Appendix-Glossary of the Commission's Rules (filed June 27, 2001) (Petition).

² 47 C.F.R. § 36 app. (defining "study area"). See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Recommended Decision

boundary freeze if it wishes to sell or purchase additional exchanges.

3. Transfer of Universal Service Support. Section 54.305 of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.³ For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's new universal service support mechanism for non-rural carriers,⁴ the loops of the acquired exchange shall receive the same per-line support as calculated under the new non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any other exchanges.⁵ Section 54.305 is meant to ensure that a selling carrier does not artificially inflate the price of an exchange in anticipation of the buyers receipt of universal service support as a result of the transfer.⁶ High-cost support mechanisms currently include non-rural carrier forward-looking high-cost support,⁷ interim hold-harmless support for non-rural carriers,⁸ rural carrier high-cost loop support,⁹ local switching support,¹⁰ and Long Term Support (LTS).¹¹ To the extent that a carrier acquires exchanges

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and Order, 49 Fed. Reg. 48325 (1984); Decision and Order, 50 Fed. Reg. 939 (1985); see also *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990).

³ 47 C.F.R. § 54.305.

⁴ On November 2, 1999, the Commission released two orders finalizing implementation plans for high-cost reform for non-rural carriers. See *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, para. 34 (1999) (*Ninth Report and Order*), reversed in part and remanded in part, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). See also *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LEC's*, Tenth Report and Order, CC Docket Nos. 96-45, 97-160, 14 FCC Rcd. 20156 (1999) (*Tenth Report and Order*) (reaffirming use of the statutory definition of rural telephone company found in section 153(37) of the Communications Act for purposes of calculating support under the high-cost mechanism), affirmed, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). The new mechanism, which went into effect on January 1, 2000, does not apply to rural carriers. The new mechanism for non-rural carriers directs support to carriers based on the forward-looking economic cost of operating a given exchange. See 47 C.F.R. § 54.309.

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (*First Report and Order*); as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), affirmed in part, reversed in part and remanded in part *sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

⁶ *Id.*

⁷ See 47 C.F.R. § 54.309.

⁸ In the event that support provided to a non-rural carrier in a given state is less under the forward-looking methodology, the carrier is eligible for interim hold-harmless support, which is equal to the amount of support for which the non-rural carrier would have been eligible under the Commission's existing high-cost support mechanism. See 47 C.F.R. § 54.311. The Commission has adopted measures to phase down interim hold-harmless support through \$1.00 reductions in average monthly, per-line support beginning January 1, 2001, and every year thereafter until there is no more interim hold-harmless support. The phase down will not apply to a rural carrier when it acquires telephone exchanges from a non-rural carrier until the Commission completes a review of section 54.304 of the Commission's rules or until rural high-cost reform is complete. *Federal-State Joint Board on Universal Service*, Thirteenth Report and Order and Further Notice Of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-428 (rel. Dec. 8, 2000).

⁹ Rural carriers receive high-cost loop support when their reported average cost per loop exceeds the nationwide average loop cost by fifteen percent. See 47 C.F.R. §§ 36.601-36.631.

receiving any of these forms of support, the acquiring carrier will receive the same per-line levels of support for which the acquired exchanges were eligible prior to their transfer.

4. *The Petition for Waiver*. On June 27, 2001, ICTC and Odin filed a joint petition for waiver of the definition of “study area” contained in the Part 36 Appendix-Glossary of the Commission’s rules. The requested waiver would permit ICTC to remove the Oblong exchange, which serves approximately 1,559 access lines, and Martinsville exchange which serves 1,131 access lines, from its Illinois study area and permit Odin to include the acquired exchanges in its existing Illinois study area. On July 10, 2001, the Common Carrier Bureau (Bureau) released a public notice seeking comment on the petition.¹² No comments were received.

B. Discussion

5. We find that good cause exists to waive the definition of study area contained in the Part 36 Appendix-Glossary of the Commission’s rules to permit ICTC to remove the Oblong and Martinsville exchanges from its Illinois study area and to permit Odin to include the acquired exchanges in its Illinois study area.

6. Generally, the Commission’s rules may be waived for good cause shown.¹³ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶ Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission traditionally has applied a three-prong standard. First, the change in study area boundaries must not adversely affect the universal service fund. Second, no state commission having regulatory authority over the transferred exchanges may oppose the transfer. Third, the transfer must be in the public interest.¹⁷ For the reasons discussed below, we conclude that petitioners have satisfied these criteria and have demonstrated that good cause exists for waiver of the Commission’s study area freeze rule.

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¹⁰ Incumbent LECs that are designated eligible telecommunications carriers and serve study areas with 50,000 or fewer access lines receive support for local switching costs. 47 C.F.R. § 54.301. Local switching support enables participants to assign a greater proportion of local switching costs to the interstate jurisdiction.

¹¹ Carriers that participate in the NECA common line pool are eligible to receive LTS. See 47 C.F.R. § 54.303. LTS supports interstate access rates for carriers that are members of the NECA pool, by reducing the amount of interstate-allocated loop costs that such carriers must recover through carrier common line charges. See *First Report and Order*, 12 FCC Rcd at 9163-9165 (1997).

¹² *Illinois Consolidated Telephone and Odin Telephone Exchange, Inc. Seek a Waiver of the Definition of “Study Area” in Part 36 of the Commission’s Rules*, Public Notice, DA 01-232 (rel. July 10, 2001).

¹³ 47 C.F.R. § 1.3.

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ See, e.g., *U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the Commission’s Rules*, CC Docket No. 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1871, 1872 (1995).

7. First, we conclude that ICTC and Odin have demonstrated that the proposed change in the study area boundaries will not adversely affect any of the universal service mechanisms. Under section 54.305 of the Commission's rules, carriers purchasing exchanges can only receive the same level of per-line support that the selling company was receiving for those exchanges prior to the sale. As a result, there can, by definition, be no adverse impact on the universal service fund resulting from this transaction.¹⁸ Because the Oblong and Martinsville exchanges currently receive no high-cost support, Odin will not receive high-cost loop support for the acquired exchanges after the transfer. Therefore, we conclude that this transaction will not adversely affect any of the universal service mechanisms.

8. Second, no state commission with regulatory authority over the transferred exchanges opposes the transfer. The Illinois Commerce Commission does not object to the grant of the study area waiver.¹⁹

9. Finally, we conclude that the public interest is served by a waiver of the study area freeze rule to permit ICTC to remove the Oblong and Martinsville exchanges from its study area and to permit Odin to include the acquired exchanges in its Illinois study area. In its petition, Odin states that it is an established local exchange carrier with a lengthy and proven record of providing high-quality telecommunications facilities and services to the residents and businesses of rural Illinois. Because the Oblong and Martinsville exchanges are in closer proximity to Odin's base of operations than to ICTC's, Odin states that it can be more responsive to the present and future telecommunications needs of the Oblong and Martinsville residents.²⁰ Based on these representations and the conclusion of the affected state commission, we conclude that petitioners have demonstrated that grant of this waiver request serves the public interest.

II. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 4 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of the Part 36 Appendix-Glossary of the Commission's rules, filed by Illinois Consolidated Telephone Company and Odin Telephone Exchange, Inc., on June 27, 2001, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION


Eric N. Einhorn
Acting Deputy Chief, Accounting Policy Division

¹⁸ See 47 C.F.R. § 54.305.

¹⁹ Illinois Commerce Commission, Interim Order, 01-0473 Illinois Consolidated Telephone Company and Odin Telephone Exchange, Inc. (filed Aug. 10, 2001).

²⁰ See Petition at 6-7.